

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY I.,

Plaintiff,

v.

1:23-CV-0796
(ML)

COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,

Defendant.

APPEARANCES:

OF COUNSEL:

ANTHONY I.

Pro se Plaintiff

P.O. BOX 58

Altamont, New York 12009

SOCIAL SECURITY ADMINISTRATION

Counsel for the Defendant

6401 Security Boulevard

Baltimore, Maryland 21235

FERGUS KAISER, ESQ.
Special A.U.S.A.

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on September 5, 2024, during a telephone conference

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 13) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 16) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 9, 2024
Binghamton, New York

A handwritten signature in black ink, reading "Miroslav Lovric", is written over a horizontal line.

Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
ANTHONY I.,

Plaintiff,

-v-

1:23-CV-796

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

DECISION TRANSCRIPT
BEFORE THE HONORABLE MIROSLAV LOVRIC
September 5, 2024
15 Henry Street, Binghamton, NY 13901

For the Plaintiff:

BY: **ANTHONY I., pro se**

For the Defendant:

SOCIAL SECURITY ADMINISTRATION
26 Federal Plaza
Room 3904
New York, New York 10278
BY: **FERGUS J. KAISER, ESQ.**

Hannah F. Cavanaugh, RPR, CRR, CSR, NYACR, NYRCR
Official United States Court Reporter
100 South Clinton Street
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(315) 234-8545

1 (The Court and all parties present by telephone.
2 Time noted: 9:39 a.m.)

3 THE COURT: All right. So the Court will begin its
4 decision as follows: Plaintiff has commenced this proceeding
5 pursuant to 42, U.S. Code, Section 405(g) to challenge the
6 adverse determination by the Commissioner of Social Security
7 finding that he was not disabled at the relevant times and
8 therefore ineligible for the benefits that he sought.

9 By way background, the Court states as follows:
10 Plaintiff was born in 1958. He is currently 66 years old. He
11 seeks disability insurance benefits for the period between
12 December 31, 2002, and his date last insured of December 31,
13 2007. On his date last insured, plaintiff was approximately
14 49 years old. Plaintiff stands approximately 5'11" and weighs
15 approximately 210 pounds.

16 Plaintiff is a high school graduate who subsequently
17 attended college. He testified that he left college prior to
18 graduation in order to open a restaurant with his brother. He
19 worked as a restaurant owner and head chef for approximately
20 24 years. Plaintiff testified that he sold his restaurants in
21 2002 when his impairments, including neck, shoulder, back, and
22 knee pain, made it difficult to meet the physical demands of the
23 profession. Plaintiff has not held full-time employment since
24 2002.

25 Procedurally, the Court notes as follows: Plaintiff

1 applied for Title II benefits on July 15, 2020, alleging an
2 onset date of December 31, 2002. In his application for
3 benefits, plaintiff claimed disability due to degenerative disc
4 disease and panic disorder. During the administrative process,
5 plaintiff also reported functional limitations imposed by right
6 shoulder pain and instability in the right knee despite
7 surgeries to address these issues.

8 Administrative Law Judge Mary Sparks convened a
9 telephonic hearing on October 13, 2021, to address plaintiff's
10 application for benefits, but she adjourned it without taking
11 testimony in light of newly received medical evidence.
12 Plaintiff's application was reassigned to ALJ Jude Mulvey, who
13 held a telephonic hearing on February 9, 2022, at which
14 plaintiff and vocational expert Warren Maxim testified. ALJ
15 Mulvey issued an unfavorable decision on February 18, 2022.
16 That decision became the final determination of the agency on
17 April 26, 2023, when the Appeals Council denied plaintiff's
18 request for review. This action was commenced on June 30, 2023,
19 and it is timely.

20 In his February 18, 2022, decision, ALJ Mulvey
21 applied the familiar sequential test for determining disability.
22 At step one, the ALJ concluded that plaintiff had not engaged in
23 substantial gainful activity during the relevant period between
24 his alleged onset date of December 31, 2002, through his date
25 last insured of December 31, 2007.

1 At step two, ALJ Mulvey concluded that plaintiff had
2 the following severe impairments: Postsurgical right knee
3 disorder, degenerative disc disease and facet disease of the
4 cervical spine, right rotator cuff tear with surgery, and left
5 biceps tendonitis.

6 At step three, ALJ Mulvey concluded that plaintiff
7 did not have an impairment or combination of impairments that
8 met or medically equaled the severity of one of the listed
9 impairments in 20 C.F.R. Section 416.920(c) during the relevant
10 period in consideration. In making this determination, the ALJ
11 considered the following listings: Listing 1.15 dealing with
12 disorders of the skeletal spine resulting in compromised nerve
13 root; also, listing 1.17 dealing with reconstructive surgery or
14 surgical arthrodesis of a major weightbearing joint.

15 Next, the ALJ determined that plaintiff has the
16 residual functional capacity, also known as RFC, to perform less
17 than the full range of light work. Specifically, the ALJ found
18 plaintiff cannot climb ladders, ropes, or scaffolds, or work
19 with moving mechanical parts of equipment. The ALJ found that
20 plaintiff can occasionally climb stairs, stoop, crouch, crawl,
21 and kneel, and that he can frequently reach with his left upper
22 extremity, and the plaintiff should also avoid concentrated
23 exposure to vibrations.

24 At step four, the ALJ relied on the vocational expert
25 testimony to determine that plaintiff was able to perform his

1 past relevant work as a restaurant manager.

2 Continuing to rely on the vocational expert
3 testimony, the ALJ made alternative findings at step five that,
4 in light of plaintiff's age, education, work experience, and
5 RFC, that there are jobs that exist in significant numbers in
6 the national economy that plaintiff could have performed during
7 the relevant period. More specifically, the vocational expert
8 testified that plaintiff could have performed the requirements
9 of representative occupations such as order clerk, document
10 preparer, and surveillance system monitor. Accordingly, the ALJ
11 found that plaintiff was not disabled during the relevant period
12 between December 31, 2002, through December 31st of 2007.

13 I now turn to plaintiff's arguments in plaintiff's
14 filings. Plaintiff was represented by counsel during the
15 administrative hearing and appeal process, but plaintiff
16 commenced this proceeding pro sé. He filed a brief and also a
17 reply brief in this proceeding, and plaintiff makes the
18 following arguments and contentions: First, plaintiff argues
19 the ALJ's RFC determination ignored significant relevant medical
20 evidence; second, plaintiff argues the ALJ erred by relying on
21 state agency medical consultants without proof that the
22 consultants had reviewed the full medical record; third,
23 plaintiff argues the ALJ erred by finding that plaintiff's
24 description of his symptoms was inconsistent with the medical
25 evidence; and fourth, the plaintiff argues that the ALJ erred in

1 discussing plaintiff's dyspnea and chest pain when plaintiff did
2 not claim that these conditions were disabling during the
3 relevant period.

4 Recognizing the Second Circuit's mandate that pro sé
5 litigants should be granted "special solicitude" by the Court,
6 this Court will address each of these contentions while
7 undertaking a more general review of the ALJ's sequential
8 evaluation to determine whether the ALJ's decision was supported
9 by substantial evidence.

10 That being said, this Court's functional role in this
11 case is limited and extremely deferential. This Court must
12 determine whether correct legal principles were applied and
13 whether the determination is supported by substantial evidence,
14 defined as such relevant evidence as a reasonable mind would
15 find sufficient to support a conclusion. As the Second Circuit
16 noted in the case of *Brault v. Social Security Administration*
17 *Commissioner*, that's found at 683 F.3d 443, a 2012 Second
18 Circuit case, therein, the Second Circuit stated that this
19 standard is demanding, more so than the clearly erroneous
20 standard. The Court noted in *Brault* that once there's a finding
21 of fact, that fact can be rejected only if a reasonable
22 factfinder would have to conclude otherwise.

23 The Court now begins its analysis in this case,
24 beginning with the step two determination made by the ALJ. In
25 considering plaintiff's claim for benefits, the ALJ found

1 post-surgical right knee disorder, degenerative disc disease and
2 facet disease of the cervical spine, right rotator cuff tear
3 with surgery, and left biceps tendonitis were severe impairments
4 because they imposed more than a minimal harmful effect on
5 plaintiff's ability to do basic work activities. The ALJ also
6 considered other impairments referenced in the broader medical
7 record, including bilateral carpal tunnel syndrome; lumbar
8 disorder; lateral epicondylitis, also known as tennis elbow;
9 dyspnea, also known as shortness of breath; and lung scarring,
10 but found that they did not rise to the level of severe
11 impairments.

12 In reaching this step two determination, the ALJ
13 considered physician-reviewed X-rays and other imaging reports,
14 consistent physician recommendations for conservative therapy
15 approaches, such as physical therapy, and the lack of any
16 surgery or ongoing treatment during the relevant period.

17 Specifically, with regard to dyspnea and chest pain,
18 the ALJ considered evidence from the relevant period that
19 included an exercise stress test that showed "excellent exercise
20 tolerance" and abnormal electrocardiogram findings.

21 This Court finds that the ALJ's analysis at step two
22 provides sufficient explanation indicating that he adequately
23 considered the evidence related to plaintiff's alleged
24 impairments. Therefore, the ALJ had substantial evidence to
25 support his conclusions at step two.

1 In the alternative, the Court finds that any error by
2 the ALJ at step two, such as failing to identify a severe
3 impairment, would be harmless because he found other impairments
4 severe. Also, the ALJ continued with the sequential evaluation,
5 and the ALJ provided adequate explanation in his decision
6 showing he properly considered the evidence related to all of
7 plaintiff's impairments.

8 In his brief, plaintiff contends that the ALJ abused
9 his discretion by discussing plaintiff's dyspnea and chest pain
10 at step two and in the RFC determination, when plaintiff never
11 based his disability claim on these conditions. The plaintiff
12 further contends that the ALJ's citation to results from a
13 June 2000 stress test and "normal" electrocardiogram findings
14 was misleading, because these conditions eventually led to
15 plaintiff suffering a transient ischemic attack, also known as a
16 mini stroke, in 2009 and require continual treatment by a
17 cardiologist. Plaintiff's brief suggests that he would have
18 offered additional information regarding the current status of
19 these conditions if he had known the ALJ would consider them.

20 This Court finds no error in the ALJ's consideration
21 of plaintiff's dyspnea and chest pain. The ALJ was legally
22 required to consider the combined effect of all of plaintiff's
23 impairments on his disability status, regardless of whether a
24 specific impairment qualified as severe or nonsevere. For that
25 proposition, see 20 C.F.R. Section 404.1523(c). See also case

1 of *Wood v. Colvin*, 987 F. Supp. 2d at 180 and at page 198. That
2 is a Northern District of New York 2013 case. And therein, the
3 Court found the ALJ properly considered the combined effect of
4 all of plaintiff's impairments, including his nonsevere
5 impairments, at every step of the disability evaluation process.
6 At the same time, the ALJ's inquiry was limited to the
7 functional limitations imposed by plaintiff's impairments for
8 the period between December 31, 2002, through his date last
9 insured of December 31, 2007. Evidence that showed a worsening
10 of plaintiff's condition after the date last insured is not
11 relevant to that inquiry, see case of *Vilardi v. Astrue*, at 447
12 F. App'x 271 at page 272, and that is a Second Circuit 2012
13 case, holding that the claimant's reliance on evidence
14 demonstrating a worsening of her condition after the date on
15 which she was last insured was of "little value" to counter the
16 substantial evidence the ALJ relied on to determine that she
17 retained the RFC to perform her past relevant work.
18 Accordingly, the ALJ's step two determination does not present
19 any grounds for remand in this case.

20 The Court will now turn to the step three analysis by
21 the ALJ. To meet a listing, plaintiff must show that his
22 medically determinable impairment satisfies all of the specified
23 criteria in a listing. In this case, the ALJ considered the
24 available treatment record, as well as plaintiff's testimony, to
25 conclude that plaintiff did not have an impairment or

1 combination of impairments that meets or medically equals the
2 severity of any listed impairment.

3 Plaintiff has not raised any issue with the ALJ's
4 step three determination, and this Court's review of the ALJ's
5 decision finds no grounds for remand. The ALJ's analysis at
6 step three indicates sufficient consideration of plaintiff's
7 impairments in relation to the listings, and the findings are
8 supported by substantial evidence.

9 The Court will now turn to the RFC analysis conducted
10 by the ALJ. RFC is defined as what an individual can still do
11 despite his or her limitations. In other words, RFC is the
12 individual's maximum remaining ability to do sustained work
13 activities in an ordinary work setting on a regular and
14 continuing basis. In reaching the RFC determination, the ALJ is
15 entitled to weigh all the evidence available to reach a
16 conclusion that is consistent with the record as a whole. That
17 conclusion need not perfectly correspond to any medical opinion
18 in the record.

19 In this case, the ALJ found that plaintiff was
20 capable of performing less than the full range of light work
21 during the relevant period.

22 Given the remote period under review, the record does
23 not contain much useful opinion evidence. Two state agency
24 consultants who reviewed the record found insufficient evidence
25 to assess plaintiff's functional limitations. The ALJ noted

1 their reviews, but did not rely upon them. Instead, the ALJ
2 relied on primary care and emergency room records to establish
3 that plaintiff had a limited and conservative treatment history
4 during the relevant period. The ALJ also considered Workers'
5 Compensation reports that summarized plaintiff's medical
6 history, including surgeries that predated the alleged
7 disability onset date. The ALJ also cited a treatment summary
8 by a neurosurgical specialist who evaluated plaintiff in
9 May 2003 and described plaintiff as doing "quite well" after a
10 course of physical therapy for lower back pain.

11 Plaintiff challenges the state agency consultant's
12 conclusion regarding the sufficiency of the medical evidence and
13 speculates that the physicians did not review the entire record
14 before issuing their separate opinions. This argument is
15 unpersuasive for several reasons. First, the consultants cited
16 the records that they reviewed before determining that
17 plaintiff's application did not support a disability claim.
18 Second, there is general recognition that state agency
19 consultants are "highly qualified and experts in Social Security
20 Disability evaluation," and the ALJ could have relied on some or
21 all of their opinions if supported by substantial evidence.
22 Finally, the consultants' opinions had minimal impact on the RFC
23 determination, because the ALJ did not rely on them to establish
24 any functional limitations.

25 Plaintiff's contention that the ALJ improperly

1 discounted his testimony regarding the functional limitations
2 imposed by his back, shoulder, and knee pain is likewise
3 unpersuasive. Subjective complaints alone are not a basis for
4 an award of disability insurance benefits in the absence of
5 corroborating objective medical evidence. Here, the ALJ
6 appropriately compared plaintiff's description of his ongoing
7 functional limitations with medical reports from the relevant
8 period showing improvement with conservative treatment such as
9 pain medication and physical therapy.

10 In challenging the ALJ's determination that plaintiff
11 was capable of performing some light work jobs, plaintiff points
12 to treatment notes and imaging reports cataloguing his diagnosed
13 impairments. Mere diagnosis, however, does not establish the
14 functional limitations imposed by those impairments. To the
15 extent that plaintiff argues that the ALJ should have
16 interpreted the medical and testimonial evidence differently,
17 such challenges must likewise be rejected, because they are
18 premised entirely upon a disagreement over how the ALJ resolved
19 arguably conflicting evidence. It is not sufficient that
20 reasonable parties could interpret the evidence differently, and
21 it is not the function of this reviewing court to reweigh the
22 evidence.

23 Accordingly, this Court finds that the ALJ's RFC
24 determination was supported by substantial evidence.

25 The Court now turns to the step four analysis

1 conducted by the ALJ. At step four, the ALJ must determine
2 whether an individual can perform their past relevant work.
3 Past relevant work can be either the specific job as plaintiff
4 actually performed it or the same kind of work as it is
5 generally performed throughout the economy. To answer this
6 inquiry, an ALJ may engage a vocational expert to opine on the
7 jobs that a hypothetical person of the claimant's age,
8 education, and RFC could perform in the national economy.
9 Because this Court has found the ALJ's RFC determination was
10 supported by substantial evidence, it also finds the ALJ's
11 matching hypothetical of the vocational expert was proper.

12 Here, the vocational expert categorized plaintiff's
13 prior work into two job roles. First, restaurant chef -- and I
14 should say, the two job roles are restaurant chef and restaurant
15 manager. The vocational expert testified that someone of
16 plaintiff's age, education, and RFC would not be able to meet
17 the physical requirements of the restaurant chef position, but
18 could still meet the work requirements of restaurant manager, as
19 that job is generally performed in the national economy. Thus,
20 the ALJ reasonably concluded that plaintiff was not disabled
21 during the relevant period.

22 The Court now turns to the step five analysis
23 conducted by the ALJ. Having found that plaintiff could meet
24 the job requirements of restaurant manager, the ALJ could have
25 ended his inquiry there. Instead, the ALJ, again relied on

1 vocational expert testimony to reach an alternative finding at
2 step five that there were other jobs in the national economy
3 that an individual with plaintiff's RFC could perform during the
4 relevant period.

5 The vocational expert identified three representative
6 occupations that plaintiff could perform. Those three are order
7 clerk, document preparer, and surveillance system monitor. The
8 ALJ then appropriately questioned the vocational expert
9 regarding the basis for that opinion and sought explanation
10 where his opinion relied on his professional expertise rather
11 than the standard definitions in the Dictionary of Occupational
12 Titles.

13 Numerous courts have questioned whether technological
14 advances make the positions of document preparer and
15 surveillance system monitor obsolete in the modern economy,
16 which would include the period between December 2002 and
17 December of 2007. With regard to the document preparer
18 position, the vocational expert testified that the physical
19 requirements of the position also corresponded to jobs that
20 require working with modern technology such as high-speed
21 document scanning. This Court need not resolve that issue to
22 find that the ALJ's step five determination was supported by
23 substantial evidence, because the vocational expert also
24 testified -- excuse me, the vocational expert also identified
25 the position of order clerk, with approximately 13,000 full-time

1 positions available nationally, as a job existing in significant
2 numbers in the national economy. Courts have regularly held
3 that where a vocational expert identifies at least one job
4 existing in significant numbers, that the Commissioner's
5 obligation at step five is satisfied.

6 Therefore, to the extent it is necessary, this Court
7 also finds the vocational expert's testimony provided
8 substantial evidence for the ALJ to determine that there were
9 jobs existing in significant numbers in the national economy
10 that plaintiff could perform. Accordingly, the ALJ's step five
11 determination does not present any grounds for remand.

12 Based on the foregoing, the ALJ's decision was based
13 upon correct legal standards, and substantial evidence supports
14 his ultimate determination that plaintiff was not under a
15 disability through the date of his decision.

16 As a result, this Court therefore finds and concludes
17 that defendant's motion for judgment on the pleadings is
18 granted, plaintiff's complaint is dismissed, and the
19 Commissioner's decision denying plaintiff benefits is affirmed.
20 This concludes the Court's decision, analysis, and reasoning.

21 (Time noted: 10:07 a.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR, Official U.S. Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 6th day of September, 2024.

s/ Hannah F. Cavanaugh

HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR
Official U.S. Court Reporter